

STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

October 12, 2007

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

File No.: CC KA-08-01
Existing 180-Day Exp.: October 31, 2007
Proposed 180-Day Exp.: December 30 2007

REGARDING: Request to Extend the Processing Period in Order to Process a Contested Case Hearing for Conservation District Use Application (CDUA) KA-3399 for the Consolidation of Two Parcels and the Construction of the Morrow Single Family Residence (SFR)

APPLICANT: David M. and Linda Morrow

AGENT: Gregory Mooers,
c/o Randy Vitousek, Esq., Cades Schutte LLP,
75-170 Hualalai Road, Suite 303, Kailua Kona, HI 96740

LANDOWNER: David M. and Linda Morrow

LOCATION: Hā'ena, Hanalei District, Kaua'i

TMK: (4) 5-9-03:10, 45

AREA OF PARCEL: 03:10: approximately 7,112 square feet
03:45: approximately 38,555 square feet

USE: 3480 square feet

SUBZONE: Resource and Limited

BACKGROUND:

On July 13, 2007, Roy A Vitousek, III, Esq., acting on behalf of applicants David M. and Linda B. Morrow, requested a Contested Case hearing to challenge the Office of Conservation and Coastal Land's recommendation to deny Conservation District Use Application (CDUA) KA-3399 to consolidate the two above mentioned subject parcels and to construct a single family residence in Hā'ena, Hanalei, Kaua'i.

TIME EXTENSION REQUESTS:

At the same time as he petitioned for a contested case hearing Mr. Vitousek requested

that the processing period for the application be extended. On July 19, 2007 the Chair of the Board of Land and Natural Resources granted the request, extending the processing deadline to October 31, 2007.

On July 27, 2007 the Board authorized the appointment of a Hearing Officer for the case.

On July 30, 2007 the Chair selected Lou Chang, ALC as Hearing Officer.

On September 10, 2007 the challenge period for Mr. Chang's appointment passed without a challenge.

On September 14, 2007 OCCL requested that all parties provide their availability so that a Hearing on Standing could be scheduled. The petitioner has not responded, and a Hearing on Standing has not been set.

On September 18, 2007 OCCL requested that Mr. Vitousek submit his request for an additional six-month extension of the processing period for the CDUA [**Exhibit 1**]. On October 2, 2007 OCCL received a request from Mr. Vitousek to extend the processing period an additional sixty days [**Exhibit 2**].

AUTHORITY FOR GRANTING EXTENSIONS:

The authority for granting time extensions to the CDUA processing period is provided in §183C-6(b), HRS, which states that *when a contested case hearing is required pursuant to Chapter 91, the one-hundred eighty days may be extended an additional ninety days at the request of the applicant. Any request for additional extensions shall be subject to the approval of the Board.*

DISCUSSION:

OCCL notes that the contested case has been progressing in a timely manner, and that the next stages – the Hearing on Standing and the Scheduling Hearing - can commence once the petitioner's counsel makes his availability known to the Hearing Officer. OCCL notes that the Department is required by law to post a public notice of the Hearing on Standing in a paper of record 21 days prior to holding the Hearing on Standing.

Given this time frame, it is unlikely that the Evidentiary Hearing will occur before December, 2007. The Findings of Fact, Conclusions of Law, and Decision and Order should not be expected to go before the Board until 2008.

Counsel's request will extend the processing time on the application to December 30, 2007. OCCL does not believe that this sixty-day extension will allow for sufficient time to process this case.

It is OCCL's policy to always schedule the Board Hearings the meeting before the permit applications potentially expire. Given the Board's holiday schedule, this meeting

will fall on November 16, 2007. OCCL's deadline for receiving requests for agenda items for this Board Meeting is Monday, November 5, 2007.

OCCL thus anticipates receiving future requests for extensions on this case, and considers this request for a sixty-day extension a necessary but incomplete step.

Staff, therefore, recommends as follows:

RECOMMENDATION:

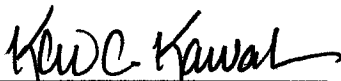
That the Board of Land and Natural Resources grant Mr. Vitousek's request to extend the processing period on CDUA KA-3399 60 days – bringing the deadline to December 30, 2007.

Respectfully submitted,



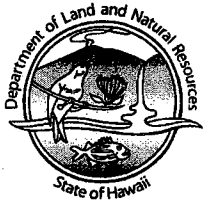
Michael Cain
Staff Planner

Approved for submittal:


for

LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

SEP 18 2007

Ref.:OCCL:MC

File: CC KA-08-01

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite 303
Kailua Kona HI 96740

Dear Mr. Vitousek,

SUBJECT: Extension of Processing Period for Conservation District Use Application [CDUA] KA-3399
for a Single Family Residence at Ha'ena, Hanalei, Kaua'i, TMK (4) 5-9-03:10, 45

The current expiration date for processing CDUA KA-3399 is October 31, 2007. The Contested Case hearings on this CDUA are unlikely to be completed by that date. OCCL requests that you submit a request for an additional extension that OCCL will then submit to the Board.

If you have questions regarding procedures, please contact Michael Cain at 587-0380.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Samuel J. Lemmo". The signature is written over a large, hand-drawn oval shape.

Samuel J. Lemmo, Senior Planner
Office of Conservation and Coastal Lands

cc: BLNR Chair
Randy Ishikawa, Deputy Attorney General

EXHIBIT 1

October 2, 2007

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@ca des .com

VIA EMAIL randall.k.ishikawa@hawaii.gov
VIA FACSIMILE (808) 587-2999
VIA FIRST-CLASS MAIL

Randall K. Ishikawa, Esq.
Deputy Attorney General
Land/Transportation Division
State of Hawaii
465 South King Street, Room 300
Honolulu, Hawaii 96813

Re: Conservation District Use Application (CDUA) KA-3399
Proposed Morrow Living Trust Single Family Residence Project,
Haena, Island of Kauai, TMK: (4) 5-9-003:010 and 045

Dear Mr. Ishikawa:

It is my understanding that the 180-day decision period for this application was extended to October 31, 2007.

On September 26, 2007, I received the enclosed e-mail from Michael Cain of the OCCL stating that the "deadline for submittals is next week." I had expected, based on our earlier communications, that this matter would have been resolved within the initial three-month extension period. It does not seem that much progress has been made, and we are still awaiting a response from your clients.

The purpose of this letter is to request a 60-day extension. I do not want to put the Board in a difficult situation, but would like to move this matter forward. We can consider further extensions if they become necessary and if there is progress.

I was disappointed when I received the enclosed October 1, 2007, letter from Mr. Lemmo. This letter seems inconsistent with Mr. Cain's e-mail of September 26, 2007, which stated "our deadline for submittals is next week." Mr. Cain's e-mail does not state a specific date when the request was required beyond "next week" and does not state that on October 1, 2007, the OCCL would be submitting its original recommendation to the Board.

EXHIBIT 2

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

Randall K. Ishikawa, Esq.
October 2, 2007
Page 2

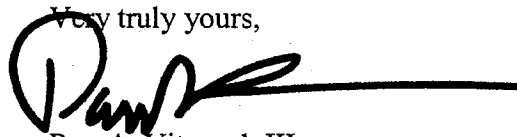
I prepared the request to extend on Monday, October 1, 2007, and was submitting it this morning, when I received Mr. Lemmo's October 1, 2007, letter.

My recollection is that the OCCL already submitted its original recommendation to the Board. Thus, I am confused as to Mr. Lemmo's statement and why Mr. Lemmo would threaten to bypass the contested case hearing procedure which the Board approved for this application.

By this letter, may I request (1) that the request to extend be placed on the Board's agenda (the request is submitted well in advance of the October 31, 2007, deadline and is consistent with Mr. Cain's e-mail); (2) that you take appropriate action to ensure that Applicant's due process rights are protected; and (3) that you encourage the OCCL to be more specific in its communications as to when it requires requests to extend.

Thank you for your attention to this matter. As always, if you have any questions or require additional information, please contact me.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

A Limited Liability Law Partnership

RAV:tmt
Enclosures

cc: Laura H. Thielen, BLNR Chair
Samuel J. Lemmo
Michael Cain
Greg Mooers
David Morrow

lmanageDB:762389.1

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
OFFICER IN CHARGE WATER RESOURCES MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BEACHING AND COASTAL REGULATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
FISHING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOA AND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Ref.: OCCL:MC

File: CC KA-08-01

OCT - 1 2007

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite 303
Kailua Kona HI 96740

Dear Mr. Vitousek,

SUBJECT: Contested Case KA-08-01 regarding Conservation District Use Application [CDUA] KA-3399 for a Single Family Residence at Hā'ena, Hanalei, Kaua'i, TMK (4) 5-9-03:10, 45

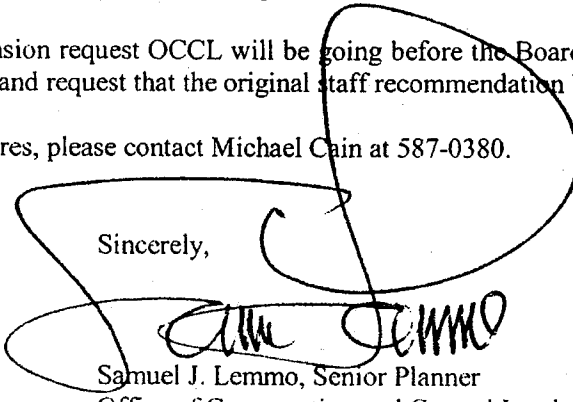
The current expiration date for processing CDUA KA-3399 is October 31, 2007. The Office of Conservation and Coastal Lands (OCCL) requested that you submit a request to extend the processing period for this application on September 18, 2007. We have yet to receive a response from your office, and have been unable to contact you via email or phone.

Applications that are not resolved by the expiration date are subject to automatic approval; thus the need for you to file an extension request. It is OCCL's practice to always schedule cases one Board meeting prior to the meeting when the permit applications potentially expire.

Because we have not received the extension request OCCL will be going before the Board of Land and Natural Resources on October 12, 2007 and request that the original staff recommendation be heard.

If you have questions regarding procedures, please contact Michael Cain at 587-0380.

Sincerely,


Samuel J. Lemmo, Senior Planner
Office of Conservation and Coastal Lands

cc: BLNR Chair
Gregory Mooers
Randy Ishikawa, Deputy Attorney General
Lou Chang, ALC

From: Stephen.M.Cain@hawaii.gov
Sent: Wednesday, September 26, 2007 3:43 PM
To: Randy Vitousek
Subject: Extensions to Processing Times on Contested Cases

Randy,

Welcome Back!

I'd like to bring the extension requests on HA-06-03 (Cohen SFR Paoo) and KA-08-01 (Morrow SFR Haena) to the next Board Meeting. Our deadline for submittals is next week. I'll call you tomorrow to check on the status of the requests.

**Thanks
Michael C.**

Michael Cain, Planner
Office of Conservation and Coastal Lands
Kalanimoku Building, Room 131
1151 Punchbowl Honolulu HI 96809
tel 808.587.0048 fax 808.587.0322

10/2/2007